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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
12

13 IN RE: HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS
17
18
19

**EXHIBIT 5 TO DECLARATION OF
CHRISTINA BROWN IN SUPPORT
OF DEFENDANTS' OPPOSITION TO
PLAINTIFFS' SUPPLEMENTAL
MOTION FOR CLASS
CERTIFICATION**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION) No. 11-CV-2509-LHK

VIDEOTAPED DEPOSITION OF MARK FICHTNER
San Francisco, California
Monday, October 15, 2012
Volume I

Reported by:
ASHLEY SOEVYN
CSR No. 12019
Job No. 1541278

PAGES 1 - 233

1 Q. Fair question. Was your sense that sort of 16:28:08
2 the marketplace for contractor positions -- the 16:28:11
3 going rate, if you will, was somewhat lower than the 16:28:16
4 going rate for full-time jobs of sort of comparable 16:28:19
5 levels? 16:28:25

6 A. I never multiplied out the numbers, but my 16:28:26
7 gut is since total compensation is a big number, 16:28:29
8 that seeing the hourly rates, I just don't think it 16:28:37
9 accounted for the bigger -- the bigger number that 16:28:40
10 you had when you were at salary. But I didn't do 16:28:42
11 those calculations directly. 16:28:50

12 Q. How many -- I guess the other thing I'm not 16:28:54
13 quite understanding is, I think you mentioned before 16:28:58
14 that sometimes a contractor that Intel brought on 16:29:01
15 would sort of mess up the curve. Did -- have I got 16:29:05
16 that right? 16:29:09

17 A. A contractor that was hired would be 16:29:13
18 outside of the curve, yes. 16:29:15

19 Q. Oh, hired on for a full-time position -- 16:29:16

20 A. Yes. 16:29:18

21 Q. -- after their time was up. That's what 16:29:18
22 you were referring to. Okay. 16:29:20

23 A. Not necessarily they were hired because of 16:29:23
24 a timeline, but they were hired -- so their contract 16:29:25
25 had ended and their full time began. 16:29:28

1 Q. Okay. Right. Okay. When you went through 16:29:38
2 your various job changes that we talked about -- 16:29:39
3 when it came time -- well, strike that. 16:29:42
4 When you would apply for the new job or 16:29:47
5 during the discussions leading up to getting the new 16:29:52
6 job, did your prospective new employer ever ask you 16:29:56
7 what you were making at your existing one? 16:30:00
8 A. Yes. 16:30:03
9 Q. And would you -- would you give that 16:30:03
10 information? 16:30:10
11 A. Yes. 16:30:10
12 Q. And what was -- and so, I guess, given the 16:30:11
13 complexities that we talked about and some of the 16:30:18
14 aspects of compensation, at least at Intel with the 16:30:20
15 EB and the equity and stuff like that, how would 16:30:23
16 you -- how would you provide that information? 16:30:26
17 A. The same way I provided it on the exhibit. 16:30:30
18 I would use later -- later years at Intel when they 16:30:34
19 printed out a pay sheet, they would multiply by 16:30:40
20 average numbers, and so I used that sheet. 16:30:44
21 Q. Did you -- did any of your direct 16:31:01
22 reports -- so at the time you were managing at 16:31:04
23 Intel, did any of your direct reports ever come and 16:31:07
24 ask you to raise their salary in response to a cold 16:31:11
25 call? 16:31:17

1 MS. SHAVER: Objection, foundation. Lack 16:31:17
2 of personal knowledge. 16:31:33
3 THE WITNESS: The second time I was a 16:32:04
4 manager, I don't believe so. The first time, I 16:32:06
5 can't recall. 16:32:12
6 BY MR. HINMAN: 16:32:12
7 Q. Okay. And to your knowledge, did any of 16:32:12
8 your direct reports ever receive a raise as a result 16:32:14
9 of a cold call that somebody else got? 16:32:17
10 MS. SHAVER: Same objections. 16:32:20
11 THE WITNESS: No. My employees received 16:32:40
12 market adjustments. As to -- 16:32:41
13 BY MR. HINMAN: 16:32:48
14 Q. As to what? 16:32:48
15 A. As to why they came about, I don't know. 16:32:50
16 Q. Okay. And I think you also testified 16:32:56
17 earlier that you yourself never negotiated for a 16:32:57
18 higher salary based on any information that you 16:33:00
19 received through a cold call. Have I got that part 16:33:02
20 right? 16:33:06
21 MS. SHAVER: Objection, misstates 16:33:16
22 testimony. 16:33:17
23 BY MR. HINMAN: 16:33:19
24 Q. I can ask it again, if you would rather -- 16:33:19
25 A. I believe the negotiations that we 16:33:37

1 discussed -- a cold call was not a factor. 16:33:40

2 Q. Okay. And then did you ever negotiate a 16:33:45

3 pay increase for yourself based on a cold call that 16:33:49

4 somebody else received? 16:33:54

5 A. I did not directly negotiate. I received 16:34:15

6 market adjustments after people had left the 16:34:20

7 company. Again, not necessarily direct, one caused 16:34:26

8 the other. But in certain groups where we lost a 16:34:29

9 senior person or very soon after a market adjustment 16:34:38

10 was applied to the group. This was prior to being a 16:34:44

11 manager. 16:34:46

12 Q. So -- okay. So that was in response to 16:34:47

13 somebody leaving as opposed to somebody getting a 16:34:50

14 cold call and bringing that information back, right 16:34:54

15 so far? 16:34:57

16 A. I can't directly speak to the causality. I 16:34:59

17 can speak to the events. 16:35:03

18 Q. Okay. Where did those senior people go 16:35:04

19 that caused -- that may or may not have caused that 16:35:09

20 effect? 16:35:12

21 A. I believe both went to Microsoft. 16:35:13

22 MR. HINMAN: Okay. I think that's all the 16:35:24

23 questions. Thanks very much for your time. 16:35:26

24 THE WITNESS: Thank you. 16:35:28

25 THE VIDEOGRAPHER: This marks the end of 16:35:31

1 disk number three of three and concludes today's 16:35:32
2 deposition of Mark Fichtner. The time is 4:35 p.m. 16:35:34
3 and we are off the record. 16:35:39

4 (TIME NOTED: 4:35 P.M.)
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1 I declare under penalty of perjury under
2 the laws of the State of California that the
3 foregoing is true and correct.

4
5 Executed on _____, 2012,
6 at _____, _____.

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11 _____
12 MARK FICHTNER
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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 22nd day of October, 2012.
24

25 _____
ASHLEY SOEVYN, CSR 12019